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**STATE OF NEVADA**



**OFFICE OF THE GOVERNOR  
NEVADA STATE OFFICE OF ENERGY**

**THE NEVADA STATE OFFICE OF ENERGY  
IS SOLICITING PROPOSALS FOR:**

**ARRA State Buildings Program to Conduct  
EnergyStar Portfolio Manager**

**REQUEST FOR PROPOSAL NO. 0003**

**Release Date: August 6, 2010  
Maximum Bid Amount \$85,000**

**Closing Date: This solicitation may close at any time upon determination by the Director of the Nevada State Office of Energy "Director" when qualified applications have been received to satisfy the needs of this RFP.**

The RFP document consists of 37 pages.

**A copy of this Request for Proposal (RFP) may be obtained by the following methods:**

1. Retrieve the document from the NSOE Web Page at: <http://www.energy.state.nv.us/> and click on "RFP Opportunities" It is entitled EnergyStar Portfolio Manager RFP. **You will be responsible for checking the web site for any amendments.**
2. E-Mail Tara Vogel at: [tvogel@energy.nv.us](mailto:tvogel@energy.nv.us) and request a copy of the RFP be forwarded to you. Please include your company name, address, contact name, phone number and fax number. We will automatically send you any amendments or changes to the RFP.

## **1. OVERVIEW OF PROJECT**

Benchmarking through ENERGY STAR Portfolio Manager by collecting data and providing it via reports and raw data to the Nevada State Office of Energy (NSOE) from approximately 124 State Buildings being retrofitted and photovoltaic installations funded thru American Recovery and Reinvestment Act (ARRA) funding. Must have demonstrated knowledge on using this software program by providing a sample report as part of the application process.

## **2. ACRONYMS/DEFINITIONS**

For the purposes of this RFP, the following acronyms/definitions will be used:

<b>ARRA</b>	American Recovery and Reinvestment Act
<b><i>Awarded Vendor</i></b>	The organization/individual that is awarded and has an approved contract with the State of Nevada for the services identified in this RFP.
<b><i>Director</i></b>	means the Director of the Nevada State Office of Energy
<b><i>Evaluation Committee</i></b>	An independent committee comprised of a majority of State officers or employees established to evaluate and score proposals submitted in response to the RFP pursuant to NRS §333.335.
<b><i>May</i></b>	Indicates something that is not mandatory but permissible.
<b><i>NSOE</i></b>	Nevada State Office of Energy
<b><i>NRS</i></b>	Nevada Revised Statutes
<b><i>RFP</i></b>	Request for Proposal; a written statement which sets forth the requirements and specifications of a contract to be awarded by competitive selection NRS §333.020(7).
<b><i>Shall/Must/Will</i></b>	Indicates a mandatory requirement. Failure to meet a mandatory requirement may result in the rejection of a proposal as non-responsive.
<b><i>Should</i></b>	Indicates something that is recommended but not mandatory. If the vendor fails to provide recommended information, the State may, at its sole option, ask the vendor to provide the information or evaluate the proposal without the information.
<b><i>State</i></b>	The State of Nevada and any agency identified herein.
<b><i>Subcontractor</i></b>	Third party, not directly employed by the vendor, who will provide services identified in this RFP. This does not include third parties who provide support or incidental services to the vendor.
<b><i>Vendor</i></b>	Organization/individual submitting a proposal in response to this RFP.

## **3. SCOPE OF WORK**

# SCOPE OF WORK

The Nevada State Office of Energy (NSOE) is releasing a request for proposal to conduct EnergyStar Portfolio Manager to be accomplished on approximately 125 State Buildings that are having energy efficiency and renewable energy installations conducted on the buildings. There might be additional buildings added onto this number, or a reduction based on awarded contractor bidding results which are currently underway. There will be no more than 130 buildings that will need to have EnergyStar Portfolio Manager conducted within the scope of the RFP.

Background: Under American Recovery and Reinvestment Act (ARRA) funds, the NSOE has approved buildings that are having renewable energy and energy efficiency upgrades conducted on them throughout the State of Nevada. NSOE has an agreement with the Department of Energy to conduct EnergyStar Portfolio Manager on the buildings using ARRA Federal grant money.

The NSOE needs to report specific criteria to the DOE. For example, Portfolio Manager calculates building's greenhouse gas emissions (including carbon dioxide, methane, and nitrous oxide) from on-site fuel combustion and purchased electricity and district heating and cooling. Portfolio Manager also enables tracking of avoided emissions from any Renewable Energy Certificates. While the emissions calculations are based on the amount of energy the building consumes, they have no bearing on its energy performance rating. The methodology for calculating greenhouse gas emissions in Portfolio Manager was designed to be consistent with the Greenhouse Gas Protocol developed by the World Resources Institute and World Business Council for Sustainable Development, and is compatible with the accounting, inventory and reporting requirements of EPA's Climate Leaders program, as well as other state and NGO registry and reporting programs.

All bidders must be compliant with State and Federal laws. Bidders must travel throughout the State to obtain and collect data required to accomplish Energy Star Portfolio Manager. Bidder must demonstrate experience with being proficient in using this benchmark program and generate thorough reports including energy consumption before and after renewable and retrofitting projects; greenhouse gas reduction calculations, and all other benchmark tools associated with EnergyStar Portfolio Manager. Bidder must have contact and repoire with NV Energy staff in order to obtain utility bill data, or other demonstrated means of obtaining State Building utility information. Reports must be submitted in a timely fashion not to exceed a deadline of January 2012. Please provide an example of a report that uses EnergyStar Portfolio Manager software as a benchmarking tool. Data is expected to be collected on the buildings from 2004 to one year after installations. All buildings will be retrofitted and renewable installations done prior to March 2011.

## 4. COMPANY BACKGROUND AND REFERENCES

### 4.1 PRIMARY VENDOR INFORMATION

Vendors must provide a company profile. Information provided shall include:

#### 4.1.1 Company ownership (sole proprietor, partnership, etc).

4.1.1.1 Incorporated companies must identify the state in which the company is incorporated and the date of incorporation. **Please be advised**, pursuant to NRS §80.010, incorporated companies must register with the State of Nevada, Secretary of State's Office as a foreign corporation before a

contract can be executed between the State of Nevada and the awarded vendor, unless specifically exempted by NRS §80.015.

4.1.1.2 The selected vendor, prior to doing business in the State of Nevada, must be appropriately licensed by the Office of the Secretary of State pursuant to NRS §76. Information regarding the Nevada Business License can be located at <http://sos.state.nv.us>. Vendors must provide the following:

- Nevada Business License Number
- Legal Entity Name
- Is “Legal Entity Name” the same name as vendor is doing business as? ☐ Yes ☐ No

If “No,” provide explanation.

4.1.2 Disclosure of any alleged significant prior or ongoing contract failures, contract breaches, any civil or criminal litigation or investigation pending which involves the vendor or in which the vendor has been judged guilty or liable.

4.1.3 Location(s) of the company offices and location of the office servicing any Nevada account(s).

4.1.4 Number of employees both locally and nationally.

4.1.5 Location(s) from which employees will be assigned.

4.1.6 Name, address and telephone number of the vendor’s point of contact for a contract resulting from this RFP.

4.1.7 Company background/history and why vendor is qualified to provide the services described in this RFP.

4.1.8 Length of time vendor has been providing services described in this RFP to the **public and/or private sector**. Please provide a brief description.

4.1.9 Has the contractor ever been engaged under contract by any State agency?

☐ Yes ☐ No

If “Yes,” specify when, for what duties, and for which agency.

4.1.10 Is the contractor or any of the contractor’s employees employed by the State of Nevada, any of its political subdivisions or by any other government?

☐ Yes ☐ No

If “Yes,” is that employee planning to render services while on annual leave, compensatory time, sick leave, or on his own time?

4.1.11 Resumes for key staff to be responsible for performance of any contract resulting from this RFP.

4.1.12 **Financial information and documentation to be included with vendor’s proposal under a separate cover marked “Confidential Information”.**

4.1.12.1 Dun and Bradstreet Number

4.1.12.2 Federal Tax Identification Number

## 4.2 REFERENCES

Vendors should provide a minimum of three (3) references from similar projects performed for private state and/or large local government clients within the last three years. **Vendors are required to submit Attachment C, Reference Form to the business references they list. The business references must submit the Reference Form directly to the NSOE designee.** It is the vendor’s responsibility to ensure that the completed forms are received by the NSOE on or before the proposal submission deadline for inclusion in the evaluation process. Business References that are not

received, or are not complete, may adversely affect the vendor's score in the evaluation process. The NSOE may contact any or all business references for validation of information submitted.

- 4.2.1 Client name;
- 4.2.2 Project description;
- 4.2.3 Project dates (starting and ending);
- 4.2.4 Technical environment; (i.e., Software applications, Internet capabilities, Data communications, Network, Hardware)
- 4.2.5 Staff assigned to reference engagement that will be designated for work per this RFP;
- 4.2.6 Client project manager name, telephone number, fax number and e-mail address.

#### **4.3 SUBCONTRACTOR INFORMATION**

- 4.3.1 Does this proposal include the use of subcontractors?  
Yes \_\_\_\_\_ No \_\_\_\_\_ Unknown \_\_\_\_\_

If "Yes", vendor must:

- 4.3.1.1 Identify specific subcontractors and the specific requirements of this RFP for which each proposed subcontractor will perform services.
- 4.3.1.2 Provide the same information for any proposed subcontractors as requested in the Primary Vendor Information section.
- 4.3.1.3 References as specified above must be provided for any proposed subcontractors.
- 4.3.1.4 The State requires that the awarded vendor provide proof of payment to any subcontractors used for this project. Proposals shall include a plan by which the State will be notified of such payments.
- 4.3.1.5 Primary vendor shall not allow any subcontractor to commence work until all insurance required of the subcontractor is provided to the using agency.
- 4.3.1.6 Primary vendor must notify the using agency of the intended use of any subcontractors not identified within their response and receive agency approval prior to subcontractor commencing work.

#### **5. COST**

**Note: Cost information *must not* be included with the vendor's Technical Proposal, please refer to the Submittal Instructions.**

Vendors must provide detailed fixed prices for all costs associated with the responsibilities and related services. Clearly specify the nature of all expenses anticipated.

#### **6. PAYMENT**

- 6.1 Payment for the contracted service will be within 3 - 5 days upon receipt of invoice and the using agency's approval.

Payment tied to specific milestones or deliverables.

Invoices are to be submitted upon completion of contract milestones which is a report for each individual State Building that includes one year of energy data and one year after that demonstrate an Energy Performance Benchmarking Analysis. Payment of contractor will be upon satisfactory completion as determined by the agency's contract monitor.

- 6.2 Vendors may propose an alternative payment option; alternative payment options must be listed on Attachment A of the RFP. Alternative payment options will be considered if deemed in the best interest of the State, project or service solicited herein. The State does not issue payment prior to receipt of goods or services.

## **7. SUBMITTAL INSTRUCTIONS**

- 7.1 In lieu of a pre-proposal conference, the NSOE will accept questions and/or comments in writing, received either by facsimile or e-mail regarding this RFP as follows:

Questions must reference the identifying RFP number and be addressed to the State of Nevada, NSOE, Attn: NSOE, faxed to NSOE or e-mailed to tvogel@energy.nv.gov. The deadline for submitting questions is August 24, 2010 at 5 p.m., Pacific Time. All questions and/or comments will be addressed in writing and responses faxed or e-mailed to prospective vendors on or about 5 days after receipt of questions. Please provide company name, address, phone number, fax number, e-mail address and contact person when submitting questions.

- 7.2 RFP Timeline

<b><i>TASK</i></b>	<b><i>DATE/TIME</i></b>
Deadline for submitting questions	August 24, 2010 by 5 pm
Answers to all questions submitted available on	August 27, 2010 by 5 pm
<b><u>Deadline for submission and opening of proposals</u></b>	<b><u>August 31, 2010 by 5 pm</u></b>
Evaluation period	August 31-September 10 2010

***NOTE: These dates represent a tentative schedule of events. The State reserves the right to modify these dates at any time, with appropriate notice to prospective vendors.***

- 7.3 Vendors shall submit one (1) original proposal marked "MASTER" and FIVE identical copies to:

State of Nevada, Nevada State Office of Energy

*Proposals shall be clearly labeled in a sealed envelope or box as follows:*

*REQUEST FOR PROPOSAL NO.: 003*  
**PROPOSAL OPENING DATE: August 6, 2010**

- 7.4 **Proposals must be received at the above-referenced address no later than August 31, 2010 by 5 pm.** Proposals that do not arrive by proposal opening time and date WILL NOT BE ACCEPTED. Vendors may submit their proposal any time prior to the above stated deadline.
- 7.5 The State will not be held responsible for proposal envelopes mishandled as a result of the envelope not being properly prepared. Facsimile, e-mail or telephone proposals will **NOT** be considered; however, at the State's discretion, proposal may submitted all or in part on electronic media, as requested within the RFP document. Proposals may be modified by facsimile, e-mail or written notice provided such notice is received prior to the opening of the proposals.
- 7.6 Although it is a public opening, only the names of the vendors submitting proposals will be announced NRS §333.335(6). Technical and cost details about proposals submitted will not be disclosed. Assistance for handicapped, blind or hearing-impaired persons who wish to attend the RFP opening is available. If special arrangements are necessary, please notify the NSOE designee as soon as possible and at least two days in advance of the opening.
- 7.7 If discrepancies are found between two or more copies of the proposal, the master copy will provide the basis for resolving such discrepancies. If one copy of the proposal is not clearly marked "MASTER," the State may reject the proposal. However, the State may at its sole option, select one copy to be used as the master.
- 7.8 For ease of evaluation, the proposal should be presented in a format that corresponds to and references sections outlined within this RFP and should be presented in the same order. Responses to each section and subsection should be labeled so as to indicate which item is being addressed. Exceptions to this will be considered during the evaluation process.
- 7.9 If complete responses cannot be provided without referencing supporting documentation, such documentation must be provided with the proposal and specific references made to the tab, page, section and/or paragraph where the supplemental information can be found.
- 7.10 Proposals are to be prepared in such a way as to provide a straightforward, concise delineation of capabilities to satisfy the requirements of this RFP. Expensive bindings, colored displays, promotional materials, etc., are not necessary or desired. Emphasis should be concentrated on conformance to the RFP instructions, responsiveness to the RFP requirements, and on completeness and clarity of content.
- 7.11 Descriptions on how any and all equipment and/or services will be used to meet the requirements of this RFP shall be given, in detail, along with any additional information documents that are appropriately marked.

- 7.12 The proposal must be signed by the individual(s) legally authorized to bind the vendor NRS §333.337.
- 7.13 For ease of responding to the RFP, vendors are encouraged, but not required, to request an electronic copy of the RFP. Electronic copies are available in the following formats: Word 6.0/7.0 via e-mail, cd, or on the NSOE website in PDF or EXE format at NSOE. When requesting an RFP via e-mail or diskette, vendors should contact the NSOE for assistance. In the event vendors choose to receive the RFP on cd, the vendor will be responsible for providing a blank cd; unless vendors provide a Federal Express, Airborne Express, etc. account number and appropriate return materials, the cd will be returned by first class U.S. mail.
- 7.14 Vendors utilizing an electronic copy of the RFP in order to prepare their proposals should place their written response in ***an easily distinguishable font*** immediately following the applicable question.
- 7.15 ***For purposes of addressing questions concerning this RFP, the sole contact will be Tara Vogel. Upon issuance of this RFP, other employees and representatives of the agencies identified in the RFP will not answer questions or otherwise discuss the contents of this RFP with any prospective vendors or their representatives. Failure to observe this restriction may result in disqualification of any subsequent proposal NAC §333.155(3).*** This restriction does not preclude discussions between affected parties for the purpose of conducting business unrelated to this procurement.
- 7.16 Vendor who believes proposal requirements or specifications are unnecessarily restrictive or limit competition may submit a request for administrative review, in writing, to the NSOE. To be considered, a request for review must be **received** no later than the deadline for submission of questions.
- The NSOE shall promptly respond in writing to each written review request, and where appropriate, issue all revisions, substitutions or clarifications through a written amendment to the RFP.
- Administrative review of technical or contractual requirements shall include the reason for the request, supported by factual information, and any proposed changes to the requirements.
- 7.17 If a vendor changes any material RFP language, vendor's response may be deemed non-responsive. NRS §333.311.
- 7.18 Vendors are cautioned that some services may contain licensing requirement(s). Vendors shall be proactive in verification of these requirements prior to proposal submittal. Proposals, which do not contain the requisite licensure, may be deemed non-responsive. However, this does not negate any applicable Nevada Revised Statute (NRS) requirements.
- 7.19 Proposals shall be submitted in two (2) distinct parts - the **narrative/technical proposal** and the **cost proposal**. **THE NARRATIVE/TECHNICAL PROPOSAL MUST NOT INCLUDE COST AND PRICING INFORMATION.** While Technical and Cost



proposals may be shipped together (i.e., in the same box/envelope), each proposal, inclusive of the master and requisite number of copies, must be bound or packaged separately.

## **8. PROPOSAL EVALUATION AND AWARD PROCESS**

8.1 Proposals shall be consistently evaluated and scored in accordance with NRS §333.335(3) based upon the following criteria:

- Demonstrated competence;
- Experience in performance of comparable engagements;
- Reasonableness of cost;
- Expertise and availability of key personnel;
- Conformance with the terms of this RFP.

Note: Financial stability will be scored on a pass/fail basis.

**Proposals shall be kept confidential until a contract is awarded.**

8.2 The evaluation committee may also contact the references provided in response to the Section identified as Company Background and References; contact any vendor to clarify any response; contact any current users of a vendor's services; solicit information from any available source concerning any aspect of a proposal; and seek and review any other information deemed pertinent to the evaluation process. The evaluation committee shall not be obligated to accept the lowest priced proposal, but shall make an award in the best interests of the State of Nevada NRS § 333.335(5)

8.3 Each vendor must include in its proposal a complete disclosure of any alleged significant prior or ongoing contract failures, contract breaches, any civil or criminal litigation or investigations pending which involves the vendor or in which the vendor has been judged guilty or liable. Failure to comply with the terms of this provision may disqualify any proposal. The State reserves the right to reject any proposal based upon the vendor's prior history with the State or with any other party, which documents, without limitation, unsatisfactory performance, adversarial or contentious demeanor, significant failure(s) to meet contract milestones or other contractual failures. See generally, NRS §333.335.

8.4 Clarification discussions may, at the State's sole option, be conducted with vendors who submit proposals determined to be acceptable and competitive NAC §333.165. Vendors shall be accorded fair and equal treatment with respect to any opportunity for discussion and/or written revisions of proposals. Such revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing vendors.

8.5 A Notification of Intent to Award shall be issued in accordance with NAC §333.170. Any award is contingent upon the successful negotiation of final contract terms and upon approval of the Board of Examiners, when required. Negotiations shall be confidential and not subject to disclosure to competing vendors unless and until an agreement is reached. If contract negotiations cannot be concluded successfully, the State upon

written notice to all vendors may negotiate a contract with the next highest scoring vendor or withdraw the RFP.

- 8.6 Any contract resulting from this RFP shall not be effective unless and until approved by the Nevada State Board of Examiners (NRS 333.700).

**9. TERMS, CONDITIONS AND EXCEPTIONS**

- 9.1 Performance of vendors will be rated semi-annually following contract award and then annually for the term of the contract by the using State agency in six categories: customer service; timeliness; quality; technology; flexibility; and pricing. Vendors will be notified in writing of their rating.
- 9.2 This procurement is being conducted in accordance with NRS chapter 333 and NAC chapter 333.
- 9.3 The State reserves the right to alter, amend, or modify any provisions of this RFP, or to withdraw this RFP, at any time prior to the award of a contract pursuant hereto, if it is in the best interest of the State to do so.
- 9.4 The State reserves the right to waive informalities and minor irregularities in proposals received.
- 9.5 The State reserves the right to reject any or all proposals received prior to contract award (NRS §333.350).
- 9.6 The State shall not be obligated to accept the lowest priced proposal, but will make an award in the best interests of the State of Nevada after all factors have been evaluated (NRS §333.335).
- 9.7 Any irregularities or lack of clarity in the RFP should be brought to the NSOE designee's attention as soon as possible so that corrective addenda may be furnished to prospective vendors.
- 9.8 Proposals must, if applicable, include any and all proposed terms and conditions, including, without limitation, written warranties, maintenance/service agreements, license agreements, lease purchase agreements and the vendor's standard contract language for consideration during the evaluation of vendor's proposal. Included documents will be taken into consideration as part of the evaluation process.
- 9.9 Alterations, modifications or variations to a proposal may not be considered unless authorized by the RFP or by addendum or amendment.
- 9.10 Proposals which appear unrealistic in the terms of technical commitments, lack of technical competence, or are indicative of failure to comprehend the complexity and risk of this contract, may be rejected.

- 9.11 Proposals from employees of the State of Nevada will be considered in as much as they do not conflict with the State Administrative Manual, NRS Chapter §281 and NRS Chapter §284.
- 9.12 Proposals may be withdrawn by written or facsimile notice received prior to the proposal opening time. Withdrawals received after the proposal opening time will not be considered except as authorized by NRS §333.350(3).
- 9.13 The price and amount of this proposal must have been arrived at independently and without consultation, communication, agreement or disclosure with or to any other contractor, vendor or prospective vendor. Collaboration among competing vendors about potential proposals submitted pursuant to this RFP is prohibited and may disqualify the vendor.
- 9.14 No attempt may be made at any time to induce any firm or person to refrain from submitting a proposal or to submit any intentionally high or noncompetitive proposal. All proposals must be made in good faith and without collusion.
- 9.15 Prices offered by vendors in their proposals are an irrevocable offer for the term of the contract and any contract extensions. The awarded vendor agrees to provide the purchased services at the costs, rates and fees as set forth in their proposal in response to this RFP. No other costs, rates or fees shall be payable to the awarded vendor for implementation of their proposal.
- 9.16 The State is not liable for any costs incurred by vendors prior to entering into a formal contract. Costs of developing the proposals or any other such expenses incurred by the vendor in responding to the RFP, are entirely the responsibility of the vendor, and shall not be reimbursed in any manner by the State.
- 9.17 All proposals submitted become the property of the State and will be returned only at the State's option and at the vendor's request and expense. The master copy of each proposal shall be retained for official files and will become public record after the award of a contract. Only specific parts of the proposal may be labeled a "trade secret", provided that the vendor agrees to defend and indemnify the State for honoring such a designation (NRS §333.333). The failure to so label any information that is released by the State shall constitute a complete waiver of any and all claims for damages caused by any release of the information.
- 9.18 A proposal submitted in response to this RFP must identify any subcontractors, and outline the contractual relationship between the awarded vendor and each subcontractor. An official of each proposed subcontractor must sign, and include as part of the proposal submitted in response to this RFP, a statement to the effect that the subcontractor has read and will agree to abide by the awarded vendor's obligations.
- 9.19 The awarded vendor will be the sole point of contract responsibility. The State will look solely to the awarded vendor for the performance of all contractual obligations which may result from an award based on this RFP, and the awarded vendor shall not be relieved for the non-performance of any or all subcontractors.

- 9.20 The awarded vendor must maintain, for the duration of its contract, insurance coverages as set forth in the Insurance Schedule of the contract form appended to this RFP. Work on the contract shall not begin until after the awarded vendor has submitted acceptable evidence of the required insurance coverages. Failure to maintain any required insurance coverage or acceptable alternative method of insurance will be deemed a breach of contract.

Notwithstanding any other requirement of this section, the State reserves the right to consider reasonable alternative methods of insuring the contract in lieu of the insurance policies required by the above-stated Insurance Schedule. It will be the awarded vendor's responsibility to recommend to the State alternative methods of insuring the contract. Any alternatives proposed by a vendor should be accompanied by a detailed explanation regarding the vendor's inability to obtain insurance coverage as described above. The State shall be the sole and final judge as to the adequacy of any substitute form of insurance coverage.

- 9.21 Each vendor must disclose any existing or potential conflict of interest relative to the performance of the contractual services resulting from this RFP. Any such relationship that might be perceived or represented as a conflict should be disclosed. By submitting a proposal in response to this RFP, vendors affirm that they have not given, nor intend to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant or any employee or representative of same, in connection with this procurement. Any attempt to intentionally or unintentionally conceal or obfuscate a conflict of interest will automatically result in the disqualification of a vendor's proposal. An award will not be made where a conflict of interest exists. The State will determine whether a conflict of interest exists and whether it may reflect negatively on the State's selection of a vendor. The State reserves the right to disqualify any vendor on the grounds of actual or apparent conflict of interest.
- 9.22 The State will not be liable for Federal, State, or Local excise taxes.
- 9.23 Execution of Attachment A of this RFP shall constitute an agreement to all terms and conditions specified in the RFP, including, without limitation, the Attachment B contract form and all terms and conditions therein, except such terms and conditions that the vendor expressly excludes. Exceptions will be taken into consideration as part of the evaluation process.
- 9.24 The State reserves the right to negotiate final contract terms with any vendor selected NAC §333.170. The contract between the parties will consist of the RFP together with any modifications thereto, and the awarded vendor's proposal, together with any modifications and clarifications thereto that are submitted at the request of the State during the evaluation and negotiation process. In the event of any conflict or contradiction between or among these documents, the documents shall control in the following order of precedence: the final executed contract, the RFP, any modifications and clarifications to the awarded vendor's proposal, and the awarded vendor's proposal. Specific exceptions to this general rule may be noted in the final executed contract.
- 9.25 Vendor understands and acknowledges that the representations above are material and important, and will be relied on by the State in evaluation of the proposal. Any vendor

- misrepresentation shall be treated as fraudulent concealment from the State of the true facts relating to the proposal.
- 9.26 No announcement concerning the award of a contract as a result of this RFP can be made without the prior written approval of the State.
  - 9.27 The Nevada Attorney General will not render any type of legal opinion regarding this transaction.
  - 9.28 Any unsuccessful vendor may file an appeal in strict compliance with NRS 333.370 and chapter 333 of the NAC.
  - 9.29 Local governments (as defined in NRS §332.015) are intended third party beneficiaries of any contract resulting from this RFP and any local government may join or use any contract resulting from this RFP subject to all terms and conditions thereof pursuant to NRS §332.195. The State is not liable for the obligations of any local government which joins or uses any contract resulting from this RFP.
  - 9.30 Any person who requests or receives a Federal contract, grant, loan or cooperative agreement shall file with the using agency a certification that the person making the declaration has not made, and will not make, any payment prohibited by subsection (a) of 31 U.S.C. §1352.

## 10. **SUBMISSION CHECKLIST**

This checklist is provided for vendor's convenience only and identifies documents that must be submitted with each package in order to be considered responsive. Any proposals received without these requisite documents may be deemed non-responsive and not considered for contract award.

### **Documents to be submitted with proposal:**

### **Completed**

1. Requested number of copies of technical proposals packaged separately \_\_\_\_\_
2. Requested number of copies of cost proposals packaged separately \_\_\_\_\_
3. Page 1 of the RFP completed and signed \_\_\_\_\_
4. Primary Vendor Attachment A signed with confidentiality and exceptions noted \_\_\_\_\_
5. Subcontractor Attachment A signed with confidentiality and exceptions noted \_\_\_\_\_
6. Primary Vendor Information provided \_\_\_\_\_
7. Subcontractor Information provided (if applicable) \_\_\_\_\_
8. Reference forms sent out for Primary Vendor \_\_\_\_\_
9. Reference forms sent out for Subcontractors (if applicable) \_\_\_\_\_
10. Verification of licensure for Primary Vendor (if applicable) \_\_\_\_\_
11. Verification of licensure for Subcontractors (if applicable) \_\_\_\_\_
12. Certificate of Insurance \_\_\_\_\_
13. (other) \_\_\_\_\_

Primary Vendor's Company Name: \_\_\_\_\_

# Attachment A

## CERTIFICATION OF INDEMNIFICATION AND COMPLIANCE WITH TERMS AND CONDITIONS OF RFP PRIMARY VENDOR

Submitted proposals are confidential until the contract is awarded; following contract award, in accordance with NRS §333.333, only specific parts of the proposal may be labeled a “trade secret” as defined in NRS §600A.030(5). In the event a governing board acts as the final authority, there may be public discussion regarding the submitted proposals that will be in an open meeting format, the proposals will remain confidential.

This proposal contains proprietary information.      Yes\_\_\_\_\_      No\_\_\_\_\_

By signing below, I understand it is my responsibility as the vendor to act in protection of the labeled information and agree to defend and indemnify the State for honoring such designation. I duly realize failure to so act will constitute a complete waiver and all submitted information will become public information; additionally, failure to label any information that is released by the State shall constitute a complete waiver of any and all claims for damages caused by the release of the information.

I have read, understand and agree to comply with the terms and conditions specified in this Request for Proposal. Checking “YES” indicates acceptance, while checking “NO” denotes non-acceptance and should be detailed below. Any exceptions **MUST** be documented.

YES \_\_\_\_\_ NO \_\_\_\_\_ SIGNATURE \_\_\_\_\_  
Primary Vendor

EXCEPTIONS: Attach additional sheets if necessary. Please use this format.

### EXCEPTION SUMMARY FORM

RFP SECTION NUMBER	RFP PAGE NUMBER	PROPRIETARY INFORMATION AND/OR EXCEPTION (PROVIDE A DETAILED EXPLANATION)

# **CERTIFICATION OF COMPLIANCE WITH TERMS AND CONDITIONS OF RFP SUBCONTRACTOR**

Submitted proposals are confidential until the contract is awarded; following contract award, in accordance with NRS §333.333, only specific parts of the proposal may be labeled a “trade secret” as defined in NRS §600A.030(5). In the event a governing board acts as the final authority, there may be public discussion regarding the submitted proposals that will be in an open meeting format, the proposals will remain confidential.

This proposal contains proprietary information.      Yes\_\_\_\_\_      No\_\_\_\_\_

By signing below, I understand it is my responsibility as the vendor to act in protection of the labeled information and agree to defend and indemnify the State for honoring such designation. I duly realize failure to so act will constitute a complete waiver and all submitted information will become public information; additionally, failure to label any information that is released by the State shall constitute a complete waiver of any and all claims for damages caused by the release of the information.

I have read, understand and agree to comply with the terms and conditions specified in this Request for Proposal. Checking “YES” indicates acceptance, while checking “NO” denotes non-acceptance and should be detailed below. Any exceptions **MUST** be documented.

YES \_\_\_\_\_ NO \_\_\_\_\_ SIGNATURE \_\_\_\_\_  
Subcontractor

EXCEPTIONS: Attach additional sheets if necessary. Please use this format.

## **EXCEPTION SUMMARY FORM**

<b>RFP SECTION NUMBER</b>	<b>RFP PAGE NUMBER</b>	<b>PROPRIETARY INFORMATION AND/OR EXCEPTION ( PROVIDE A DETAILED EXPLANATION)</b>



## **Attachment B**

### **CONTRACT FORM**

The following State Contract Form is provided as a courtesy to vendors interested in responding to this RFP. Please review the terms and conditions in this form, as this is the standard contract used by the State for all services of independent contractors. **Please pay particular attention to the insurance requirements, as specified in Attachment BB and paragraph 16.**

As with all other requirements of this RFP, vendors may take exception to any of the terms in the Contract Form, including the required insurance limits. Exceptions will be considered during the evaluation process. It is not necessary for vendors to complete the Contract Form with their proposal responses.

# CONTRACT FOR SERVICES OF INDEPENDENT CONTRACTOR

A Contract Between the State of Nevada  
Acting By and Through Its

(NAME, ADDRESS, PHONE AND FACSIMILE NUMBER OF CONTRACTING AGENCY)

and

(NAME, CONTACT PERSON, ADDRESS, PHONE, FACSIMILE NUMBER OF INDEPENDENT CONTRACTOR)

WHEREAS, NRS 333.700 authorizes elective officers, heads of departments, boards, commissions or institutions to engage, subject to the approval of the Board of Examiners, services of persons as independent contractors; and

WHEREAS, it is deemed that the service of Contractor is both necessary and in the best interests of the State of Nevada;

NOW, THEREFORE, in consideration of the aforesaid premises, the parties mutually agree as follows:

1. REQUIRED APPROVAL. This Contract shall not become effective until and unless approved by the Nevada State Board of Examiners.

2. DEFINITIONS. "State" means the State of Nevada and any state agency identified herein, its officers, employees and immune contractors as defined in NRS 41.0307. "Independent Contractor" means a person or entity that performs services and/or provides goods for the State under the terms and conditions set forth in this Contract. "Fiscal Year" is defined as the period beginning July 1 and ending June 30 of the following year.

3. CONTRACT TERM. This Contract shall be effective from \_\_\_\_\_ subject to Board of Examiners' approval (anticipated to be \_\_\_\_\_) to \_\_\_\_\_, unless sooner terminated by either party as specified in paragraph ten (10).

4. NOTICE. Unless otherwise specified, termination shall not be effective until \_\_\_\_ calendar days after a party has served written notice of default, or without cause upon the other party. All notices or other communications required or permitted to be given under this Contract shall be in writing and shall be deemed to have been duly given if delivered personally in hand, by telephonic facsimile with simultaneous regular mail, or mailed certified mail, return receipt requested, postage prepaid on the date posted, and addressed to the other party at the address specified above.

5. INCORPORATED DOCUMENTS. The parties agree that the scope of work shall be specifically described. This Contract incorporates the following attachments in descending order of constructive precedence:

ATTACHMENT AA: STATE SOLICITATION OR RFP #\_\_\_\_\_ and AMENDMENT(S) #\_\_\_\_\_;

ATTACHMENT BB: INSURANCE SCHEDULE; AND

ATTACHMENT CC: CONTRACTOR'S RESPONSE

A Contractor's Attachment shall not contradict or supersede any State specifications, terms or conditions without written evidence of mutual assent to such change appearing in this Contract:

6. CONSIDERATION. The parties agree that Contractor will provide the services specified in paragraph five (5) at a cost of \$ \_\_\_\_\_ per \_\_\_\_\_ (state the exact cost or hourly, daily, or weekly rate exclusive of travel or per diem expenses) with the total Contract or installments payable: \_\_\_\_\_, not to exceed \$ \_\_\_\_\_. The State does not agree to reimburse Contractor for expenses unless otherwise specified in the incorporated attachments. Any intervening end to a biennial appropriation period shall be deemed an automatic renewal (not changing the overall Contract term) or a termination as the results of legislative appropriation may require.

7. ASSENT. The parties agree that the terms and conditions listed on incorporated attachments of this Contract are also specifically a part of this Contract and are limited only by their respective order of precedence and any limitations specified.

8. TIMELINESS OF BILLING SUBMISSION. The parties agree that timeliness of billing is of the essence to the contract and recognize that the State is on a fiscal year. All billings for dates of service prior to July 1 must be submitted to the State no later than the first Friday in August of the same year. A billing submitted after the first Friday in August, which forces the State to process the billing as a stale claim pursuant to NRS 353.097, will subject the Contractor to an administrative fee not to exceed one hundred dollars (\$100.00). The parties hereby agree this is a reasonable estimate of the additional costs to the State of processing the billing as a stale claim and that this amount will be deducted from the stale claim payment due to the Contractor.

9. INSPECTION & AUDIT.

a. Books and Records. Contractor agrees to keep and maintain under generally accepted accounting principles (GAAP) full, true and complete records, contracts, books, and documents as are necessary to fully disclose to the State or United States Government, or their authorized representatives, upon audits or reviews, sufficient information to determine compliance with all state and federal regulations and statutes.

b. Inspection & Audit. Contractor agrees that the relevant books, records (written, electronic, computer related or otherwise), including, without limitation, relevant accounting procedures and practices of Contractor or its subcontractors, financial statements and supporting documentation, and documentation related to the work product shall be subject, at any reasonable time, to inspection, examination, review, audit, and copying at any office or location of Contractor where such records may be found, with or without notice by the State Auditor, the relevant state agency or its contracted examiners, the Department of Administration, Budget Division, the Nevada State Attorney General's Office or its Fraud Control Units, the State Legislative Auditor, and with regard to any federal funding, the relevant federal agency, the Comptroller General, the General Accounting Office, the Office of the Inspector General, or any of their authorized representatives. All subcontracts shall reflect requirements of this paragraph.

c. Period of Retention. All books, records, reports, and statements relevant to this Contract must be retained a minimum three (3) years, and for five (5) years if any federal funds are used pursuant to the Contract. The retention period runs from the date of payment for the relevant goods or services by the State, or from the date of termination of the Contract, whichever is later. Retention time shall be extended when an audit is scheduled or in progress for a period reasonably necessary to complete an audit and/or to complete any administrative and judicial litigation which may ensue.

10. CONTRACT TERMINATION.

a. Termination Without Cause. Any discretionary or vested right of renewal notwithstanding, this Contract may be terminated upon written notice by mutual consent of both parties, or unilaterally by either party without cause.

b. State Termination for Non-appropriation. The continuation of this Contract beyond the current biennium is subject to and contingent upon sufficient funds being appropriated, budgeted, and otherwise made available by the State Legislature and/or federal sources. The State may terminate this Contract, and Contractor waives any and all claim(s) for damages, effective immediately upon receipt of written notice (or any date specified therein) if for any reason the Contracting Agency's funding from State and/or federal sources is not appropriated or is withdrawn, limited, or impaired.

c. Cause Termination for Default or Breach. A default or breach may be declared with or without termination. This Contract may be terminated by either party upon written notice of default or breach to the other party as follows:

- i. If Contractor fails to provide or satisfactorily perform any of the conditions, work, deliverables, goods, or services called for by this Contract within the time requirements specified in this Contract or within any granted extension of those time requirements; or
- ii. If any state, county, city or federal license, authorization, waiver, permit, qualification or certification required by statute, ordinance, law, or regulation to be held by Contractor to provide the goods or services required by this Contract is for any reason denied, revoked, debarred, excluded, terminated, suspended, lapsed, or not renewed; or
- iii. If Contractor becomes insolvent, subject to receivership, or becomes voluntarily or involuntarily subject to the jurisdiction of the bankruptcy court; or
- iv. If the State materially breaches any material duty under this Contract and any such breach impairs Contractor's ability to perform; or
- v. If it is found by the State that any quid pro quo or gratuities in the form of money, services, entertainment, gifts, or otherwise were offered or given by Contractor, or any agent or representative of Contractor, to any officer or employee of the State of Nevada with a view toward securing a contract or securing favorable treatment with respect to awarding, extending, amending, or making any determination with respect to the performing of such contract; or
- vi. If it is found by the State that Contractor has failed to disclose any material conflict of interest relative to the performance of this Contract.

d. Time to Correct. Termination upon a declared default or breach may be exercised only after service of formal written notice as specified in paragraph four (4), and the subsequent failure of the defaulting party within fifteen (15) calendar days of receipt of that notice to provide evidence, satisfactory to the aggrieved party, showing that the declared default or breach has been corrected.

e. Winding Up Affairs Upon Termination. In the event of termination of this Contract for any reason, the parties agree that the provisions of this paragraph survive termination:

- i. The parties shall account for and properly present to each other all claims for fees and expenses and pay those which are undisputed and otherwise not subject to set off under this Contract. Neither party may withhold performance of winding up provisions solely based on nonpayment of fees or expenses accrued up to the time of termination;
- ii. Contractor shall satisfactorily complete work in progress at the agreed rate (or a pro rata basis if necessary) if so requested by the Contracting Agency;
- iii. Contractor shall execute any documents and take any actions necessary to effectuate an assignment of this Contract if so requested by the Contracting Agency;
- iv. Contractor shall preserve, protect and promptly deliver into State possession all proprietary information in accordance with paragraph twenty-one (21).

11. REMEDIES. Except as otherwise provided for by law or this Contract, the rights and remedies of the parties shall not be exclusive and are in addition to any other rights and remedies provided by law or equity, including, without limitation, actual damages, and to a prevailing party reasonable attorneys' fees and costs. It is specifically agreed that reasonable attorneys' fees shall include without limitation one hundred and twenty-five dollars (\$125.00) per hour for State-employed attorneys. The State may set off

consideration against any unpaid obligation of Contractor to any State agency in accordance with NRS 353C.190.

12. LIMITED LIABILITY. The State will not waive and intends to assert available NRS chapter 41 liability limitations in all cases. Contract liability of both parties shall not be subject to punitive damages. Liquidated damages shall not apply unless otherwise specified in the incorporated attachments. Damages for any State breach shall never exceed the amount of funds appropriated for payment under this Contract, but not yet paid to Contractor, for the fiscal year budget in existence at the time of the breach. Damages for any Contractor breach shall not exceed one hundred and fifty percent (150%) of the contract maximum "not to exceed" value. Contractor's tort liability shall not be limited.

13. FORCE MAJEURE. Neither party shall be deemed to be in violation of this Contract if it is prevented from performing any of its obligations hereunder due to strikes, failure of public transportation, civil or military authority, act of public enemy, accidents, fires, explosions, or acts of God, including without limitation, earthquakes, floods, winds, or storms. In such an event the intervening cause must not be through the fault of the party asserting such an excuse, and the excused party is obligated to promptly perform in accordance with the terms of the Contract after the intervening cause ceases.

14. INDEMNIFICATION. To the fullest extent permitted by law Contractor shall indemnify, hold harmless and defend, not excluding the State's right to participate, the State from and against all liability, claims, actions, damages, losses, and expenses, including, without limitation, reasonable attorneys' fees and costs, arising out of any alleged negligent or willful acts or omissions of Contractor, its officers, employees and agents.

15. INDEPENDENT CONTRACTOR. Contractor is associated with the State only for the purposes and to the extent specified in this Contract, and in respect to performance of the contracted services pursuant to this Contract, Contractor is and shall be an independent contractor and, subject only to the terms of this Contract, shall have the sole right to supervise, manage, operate, control, and direct performance of the details incident to its duties under this Contract. Nothing contained in this Contract shall be deemed or construed to create a partnership or joint venture, to create relationships of an employer-employee or principal-agent, or to otherwise create any liability for the State whatsoever with respect to the indebtedness, liabilities, and obligations of Contractor or any other party. Contractor shall be solely responsible for, and the State shall have no obligation with respect to: (1) withholding of income taxes, FICA or any other taxes or fees; (2) industrial insurance coverage; (3) participation in any group insurance plans available to employees of the State; (4) participation or contributions by either Contractor or the State to the Public Employees Retirement System; (5) accumulation of vacation leave or sick leave; or (6) unemployment compensation coverage provided by the State. Contractor shall indemnify and hold State harmless from, and defend State against, any and all losses, damages, claims, costs, penalties, liabilities, and expenses arising or incurred because of, incident to, or otherwise with respect to any such taxes or fees. Neither Contractor nor its employees, agents, nor representatives shall be considered employees, agents, or representatives of the State. The State and Contractor shall evaluate the nature of services and the term of the Contract negotiated in order to determine "independent contractor" status, and shall monitor the work relationship throughout the term of the Contract to ensure that the independent contractor relationship remains as such. To assist in determining the appropriate status (employee or independent contractor), Contractor represents as follows:

Contractor's  
Initials

	YES	NO
1. Does the Contracting Agency have the right to require control of when, where and how the independent contractor is to work?	_____	_____
2. Will the Contracting Agency be providing training to the independent contractor?	_____	_____
3. Will the Contracting Agency be furnishing the independent contractor with worker's space, equipment, tools, supplies or travel expenses?	_____	_____
4. Are any of the workers who assist the independent contractor in performance of his/her duties employees of the State of Nevada?	_____	_____
5. Does the arrangement with the independent contractor contemplate continuing or recurring work (even if the services are seasonal, part-time, or of short duration)?	_____	_____
6. Will the State of Nevada incur an employment liability if the independent contractor is terminated for failure to perform?	_____	_____
7. Is the independent contractor restricted from offering his/her services to the general public while engaged in this work relationship with the State?	_____	_____

16. **INSURANCE SCHEDULE.** Unless expressly waived in writing by the State, Contractor, as an independent contractor and not an employee of the State, must carry policies of insurance and pay all taxes and fees incident hereunto. Policies shall meet the terms and conditions as specified within this Contract along with the additional limits and provisions as described in Attachment BB, incorporated hereto by attachment. The State shall have no liability except as specifically provided in the Contract.

The Contractor shall not commence work before:

1) Contractor has provided the required evidence of insurance to the Contracting Agency of the State, and

2) The State has approved the insurance policies provided by the Contractor.

Prior approval of the insurance policies by the State shall be a condition precedent to any payment of consideration under this Contract and the State's approval of any changes to insurance coverage during the course of performance shall constitute an ongoing condition subsequent this Contract. Any failure of the State to timely approve shall not constitute a waiver of the condition.

**Insurance Coverage:** The Contractor shall, at the Contractor's sole expense, procure, maintain and keep in force for the duration of the Contract insurance conforming to the minimum limits as specified in Attachment BB, incorporated hereto by attachment. Unless specifically stated herein or otherwise agreed to by the State, the required insurance shall be in effect prior to the commencement of work by the Contractor and shall continue in force as appropriate until:

1. Final acceptance by the State of the completion of this Contract; or
2. Such time as the insurance is no longer required by the State under the terms of this Contract;

Whichever occurs later.

Any insurance or self-insurance available to the State shall be in excess of, and non-contributing with, any insurance required from Contractor. Contractor's insurance policies shall apply on a primary basis. Until such time as the insurance is no longer required by the State, Contractor shall provide the State with renewal or replacement evidence of insurance no less than thirty (30) days before the expiration or replacement of the required insurance. If at any time during the period when insurance is required by the Contract, an insurer or surety shall fail to comply with the requirements of this Contract, as soon as Contractor has knowledge of any such failure, Contractor shall immediately notify the State and immediately replace such insurance or bond with an insurer meeting the requirements.

**General Requirements:**

- a. **Additional Insured:** By endorsement to the general liability insurance policy evidenced by Contractor, the State of Nevada, its officers, employees and immune contractors as defined in NRS 41.0307 shall be named as additional insureds for all liability arising from the Contract.
- b. **Waiver of Subrogation:** Each insurance policy shall provide for a waiver of subrogation against the State of Nevada, its officers, employees and immune contractors as defined in NRS 41.0307 for losses arising from work/materials/equipment performed or provided by or on behalf of the Contractor.
- c. **Cross-Liability:** All required liability policies shall provide cross-liability coverage as would be achieved under the standard ISO separation of insureds clause.
- d. **Deductibles and Self-Insured Retentions:** Insurance maintained by Contractor shall apply on a first dollar basis without application of a deductible or self-insured retention unless otherwise specifically agreed to by the State. Such approval shall not relieve Contractor from the obligation to pay any deductible or self-insured retention. Any deductible or self-insured retention shall not exceed fifty thousand dollars (\$50,000.00) per occurrence, unless otherwise approved by the Risk Management Division.
- e. **Policy Cancellation:** Except for ten (10) days notice for non-payment of premium, each insurance policy shall be endorsed to state that without thirty (30) days prior written notice to the State of Nevada, c/o Contracting Agency, the policy shall not be canceled, non-renewed or coverage and /or limits reduced or materially altered, and shall provide that notices required by this paragraph shall be sent by certified mailed to the address shown on page one (1) of this contract:
- f. **Approved Insurer:** Each insurance policy shall be:
  - 1) Issued by insurance companies authorized to do business in the State of Nevada or eligible surplus lines insurers acceptable to the State and having agents in Nevada upon whom service of process may be made; and
  - 2) Currently rated by A.M. Best as "A-VII" or better.

**Evidence of Insurance:**

Prior to the start of any Work, Contractor must provide the following documents to the contracting State agency:

- 1) **Certificate of Insurance:** The Acord 25 Certificate of Insurance form or a form substantially similar must be submitted to the State to evidence the insurance policies and coverages required of Contractor. The certificate must name the State of Nevada, its officers, employees and immune contractors as defined in NRS 41.0307 as the certificate holder. The certificate should be signed by a person authorized insurer to bind coverage on its behalf. The state project/contract number; description and contract effective dates shall be noted on the certificate, and upon renewal of the policies listed Contractor shall furnish the State with replacement certificates as described within Insurance Coverage, section noted above.

**Mail all required insurance documents to the State Contracting Agency identified on page one of the contract.**

2) Additional Insured Endorsement: An Additional Insured Endorsement (CG 20 10 11 85 or CG 20 26 11 85) , signed by an authorized insurance company representative, must be submitted to the State to evidence the endorsement of the State as an additional insured per General Requirements, subsection a above.

3) Schedule of Underlying Insurance Policies: If Umbrella or Excess policy is evidenced to comply with minimum limits, a copy of the Underlyer Schedule from the Umbrella or Excess insurance policy may be required.

Review and Approval: Documents specified above must be submitted for review and approval by the State prior to the commencement of work by Contractor. Neither approval by the State nor failure to disapprove the insurance furnished by Contractor shall relieve Contractor of Contractor's full responsibility to provide the insurance required by this Contract. Compliance with the insurance requirements of this Contract shall not limit the liability of Contractor or its sub-contractors, employees or agents to the State or others, and shall be in addition to and not in lieu of any other remedy available to the State under this Contract or otherwise. The State reserves the right to request and review a copy of any required insurance policy or endorsement to assure compliance with these requirements.

17. COMPLIANCE WITH LEGAL OBLIGATIONS. Contractor shall procure and maintain for the duration of this Contract any state, county, city or federal license, authorization, waiver, permit, qualification or certification required by statute, ordinance, law, or regulation to be held by Contractor to provide the goods or services required by this Contract. Contractor will be responsible to pay all taxes, assessments, fees, premiums, permits, and licenses required by law. Real property and personal property taxes are the responsibility of Contractor in accordance with NRS 361.157 and NRS 361.159. Contractor agrees to be responsible for payment of any such government obligations not paid by its subcontractors during performance of this Contract. The State may set-off against consideration due any delinquent government obligation in accordance with NRS 353C.190.

18. WAIVER OF BREACH. Failure to declare a breach or the actual waiver of any particular breach of the Contract or its material or nonmaterial terms by either party shall not operate as a waiver by such party of any of its rights or remedies as to any other breach.

19. SEVERABILITY. If any provision contained in this Contract is held to be unenforceable by a court of law or equity, this Contract shall be construed as if such provision did not exist and the non-enforceability of such provision shall not be held to render any other provision or provisions of this Contract unenforceable.

20. ASSIGNMENT/DELEGATION. To the extent that any assignment of any right under this Contract changes the duty of either party, increases the burden or risk involved, impairs the chances of obtaining the performance of this Contract, attempts to operate as a novation, or includes a waiver or abrogation of any defense to payment by State, such offending portion of the assignment shall be void, and shall be a breach of this Contract. Contractor shall neither assign, transfer nor delegate any rights, obligations nor duties under this Contract without the prior written consent of the State.

21. STATE OWNERSHIP OF PROPRIETARY INFORMATION. Any reports, histories, studies, tests, manuals, instructions, photographs, negatives, blue prints, plans, maps, data, system designs, computer code (which is intended to be consideration under the Contract), or any other documents or drawings, pre-



pared or in the course of preparation by Contractor (or its subcontractors) in performance of its obligations under this Contract shall be the exclusive property of the State and all such materials shall be delivered into State possession by Contractor upon completion, termination, or cancellation of this Contract. Contractor shall not use, willingly allow, or cause to have such materials used for any purpose other than performance of Contractor's obligations under this Contract without the prior written consent of the State. Notwithstanding the foregoing, the State shall have no proprietary interest in any materials licensed for use by the State that are subject to patent, trademark or copyright protection.

22. PUBLIC RECORDS. Pursuant to NRS 239.010, information or documents received from Contractor may be open to public inspection and copying. The State has a legal obligation to disclose such information unless a particular record is made confidential by law or a common law balancing of interests. Contractor may label specific parts of an individual document as a "trade secret" or "confidential" in accordance with NRS 333.333, provided that Contractor thereby agrees to indemnify and defend the State for honoring such a designation. The failure to so label any document that is released by the State shall constitute a complete waiver of any and all claims for damages caused by any release of the records.

23. CONFIDENTIALITY. Contractor shall keep confidential all information, in whatever form, produced, prepared, observed or received by Contractor to the extent that such information is confidential by law or otherwise required by this Contract.

24. FEDERAL FUNDING. In the event federal funds are used for payment of all or part of this Contract:

- a. Contractor certifies, by signing this Contract, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency. This certification is made pursuant to the regulations implementing Executive Order 12549, Debarment and Suspension, 28 C.F.R. pt. 67, § 67.510, as published as pt. VII of the May 26, 1988, Federal Register (pp. 19160-19211), and any relevant program-specific regulations. This provision shall be required of every subcontractor receiving any payment in whole or in part from federal funds.
- b. Contractor and its subcontractors shall comply with all terms, conditions, and requirements of the Americans with Disabilities Act of 1990 (P.L. 101-136), 42 U.S.C. 12101, as amended, and regulations adopted thereunder contained in 28 C.F.R. 26.101-36.999, inclusive, and any relevant program-specific regulations.
- c. Contractor and its subcontractors shall comply with the requirements of the Civil Rights Act of 1964, as amended, the Rehabilitation Act of 1973, P.L. 93-112, as amended, and any relevant program-specific regulations, and shall not discriminate against any employee or offeror for employment because of race, national origin, creed, color, sex, religion, age, disability or handicap condition (including AIDS and AIDS-related conditions.) Attachment AAA demonstrates compliance requirements using ARRA funding.

25. LOBBYING. The parties agree, whether expressly prohibited by federal law, or otherwise, that no funding associated with this contract will be used for any purpose associated with or related to lobbying or influencing or attempting to lobby or influence for any purpose the following:

- a. Any federal, state, county or local agency, legislature, commission, counsel or board;
- b. Any federal, state, county or local legislator, commission member, counsel member, board member, or other elected official; or
- c. Any officer or employee of any federal, state, county or local agency; legislature, commission, counsel or board.

26. WARRANTIES.

- a. General Warranty. Contractor warrants that all services, deliverables, and/or work product under this Contract shall be completed in a workmanlike manner consistent with standards in the trade, profession, or industry; shall conform to or exceed the specifications set forth in the incorporated attachments; and shall be fit for ordinary use, of good quality, with no material defects.
- b. System Compliance. Contractor warrants that any information system application(s) shall not experience abnormally ending and/or invalid and/or incorrect results from the application(s) in the operating and testing of the business of the State. This warranty includes, without limitation, century recognition, calculations that accommodate same century and multi-century formulas and data values and date data interface values that reflect the century.

27. PROPER AUTHORITY. The parties hereto represent and warrant that the person executing this Contract on behalf of each party has full power and authority to enter into this Contract. Contractor acknowledges that as required by statute or regulation this Contract is effective only after approval by the State Board of Examiners and only for the period of time specified in the Contract. Any services performed by Contractor before this Contract is effective or after it ceases to be effective are performed at the sole risk of Contractor.

28. GOVERNING LAW; JURISDICTION. This Contract and the rights and obligations of the parties hereto shall be governed by, and construed according to, the laws of the State of Nevada, without giving effect to any principle of conflict-of-law that would require the application of the law of any other jurisdiction. The parties consent to the exclusive jurisdiction of the First Judicial District Court, Carson City, Nevada for enforcement of this Contract.

29. ENTIRE CONTRACT AND MODIFICATION. This Contract and its integrated attachment(s) constitute the entire agreement of the parties and as such are intended to be the complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in connection with the subject matter hereof. Unless an integrated attachment to this Contract specifically displays a mutual intent to amend a particular part of this Contract, general conflicts in language between any such attachment and this Contract shall be construed consistent with the terms of this Contract. Unless otherwise expressly authorized by the terms of this Contract, no modification or amendment to this Contract shall be binding upon the parties unless the same is in writing and signed by the respective parties hereto and approved by the Office of the Attorney General and the State Board of Examiners.

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be signed and intend to be legally bound thereby.

_____ Independent Contractor's Signature	_____ Date	_____ Independent's Contractor's Title
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_____ Signature	_____ Date	_____ Title
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_____ Signature	_____ Date	_____ Title
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_____ Signature	_____ Date	_____ Title
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_____ Signature - Board of Examiners	APPROVED BY BOARD OF EXAMINERS
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Approved as to form by: (Date)	On _____
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_____ Deputy Attorney General for Attorney General (Date)	On _____
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*Form Approved 05/08/02*  
Revised 11/07

**Attachment AAA**

**SPECIAL TERMS AND CONDITIONS TO BE INCLUDED IN CONTRACTS FUNDED  
IN WHOLE OR IN PART  
BY THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009**

The following are Special Terms and Conditions to be used for procurements funded by the American Recovery and Reinvestment Act of 2009. Other special terms and conditions may be developed and included when appropriate or as required by the Federal granting agency.

1. **GENERAL:** This contract is governed by the provisions of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5 (the “Recovery Act” or “ARRA”) and Federal Regulations and other guidance from the federal government implementing the Recovery Act (collectively, “Recovery Act Requirements” or “ARRA Requirements”), and the Contractor agrees that it will comply with all Recovery Act Requirements applicable to this contract. In the event of a conflict between the terms of this contract and the Recovery Act Requirements, the provisions of the Recovery Act Requirements shall be controlling. The Contractor acknowledges that these Special Terms and Conditions may require changes due to future revisions of the Recovery Act Requirements, and Contractor agrees that it shall comply with any such changes upon receipt of written notification from the state of Nevada of such changes. Such changes will become a material part of the contract without the necessity of either party executing an amendment to this contract. Contractor also agrees that it will provide all information and documentation required by the state of Nevada in order to comply with the Recovery Act Requirements. Contractor agrees that, to the extent ARRA Requirements conflict with state of Nevada requirements, the ARRA Requirements shall control.
2. **D-U-N-S® NUMBER:** All Contractors are required to provide the state of Nevada with their unique Dun & Bradstreet Data Universal Numbering System D-U-N-S® number prior to award.
3. **JOB CREATION AND RETENTION:** The Contractor shall provide to the state of Nevada an estimate of the number of new positions created and filled, positions retained, or previously existing unfilled positions that are filled or retained as a result of this Contract. The estimated number shall be expressed as full-time equivalent (FTE), calculated cumulatively as all hours worked divided by the total number of hours in a full-time schedule, as defined by the Contractor. The Contractor shall update the information regarding jobs creation and retention on a quarterly basis, and shall provide each updated report to the state of Nevada no later than ten business days before the end of each calendar quarter.

The Contractor shall provide a brief description of the types of jobs created or jobs retained in the United States and outlying areas. This description may rely on job titles, broader labor categories, or the Contractor’s existing practice for describing jobs provided the terms are widely understood and describe the general nature of the work.

**DESCRIPTION OF THE TYPES OF JOBS CREATED OR RETAINED**

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The Contractor will post any job that it creates or seeks to fill as a result of the ARRA funding to the Department of Employment Training and Rehabilitation's job bank at [http://www.detr.state.nv.us/es/es\\_job\\_order.htm](http://www.detr.state.nv.us/es/es_job_order.htm) notwithstanding any other posting they might make. Any advertisements posted by the Contractor for positions pursuant to this contract must indicate that the position is funded by the American Recovery and Reinvestment Act of 2009.

4. **AUDITING**: The Contractor shall retain all books, records, and other documents to this contract for five (5) years after final payment. Section 902 of the American Recovery and Reinvestment Act of 2009 provides the U.S. Comptroller General and his representatives with the authority to:
- a.) Examine any records of the Contractor or any of its subcontractors, or any State or local agency administering such contract, that directly pertain to, and involve transactions relating to, the contract or any subcontract; and
  - b.) Interview any officer or employee of the Contractor or any of its subcontractors, or of any State or local government agency administering the contract regarding such transaction.

Accordingly, the Comptroller General and his representatives shall have the authority and rights as provided under Section 902 of the Recovery Act with respect to this contract, which is funded with funds made available under the Recovery Act. Section 902 further states that nothing in this section shall be interpreted to limit or restrict in any way any existing authority of the Comptroller General.

Additionally, Section 1515(a) of the Recovery Act provides authority for any representatives of an appropriate inspector general appointed under Section 3 or 8G of the Inspector General Act of 1978 to examine any records or interview any employee or officers of the Contractor or its subcontractors working on this contract. The Contractor is advised that any representatives of an appropriate Inspector General appointed under Section 3 or 8G of the Inspector General Act of 1978 have the authority to examine any record and interview any employee or officer of the Contractor, its subcontractors or other firms working on this contract. This right of examination shall also include inspection at all reasonable times of the Contractor's plants, or parts of them, engaged in performing the contract. Section 1515(b) further provides that nothing in this section shall be interpreted to limit or restrict in any way any existing authority of an Inspector General.

The state of Nevada contracting officer and other representatives of the state of Nevada shall have, in addition to any other audit or inspection right in this contract, all the audit and inspection rights contained in this section.

5. **BUY AMERICAN**: Section 1605 of the Recovery Act prohibits use of recovery funds for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States. The law requires that this prohibition be applied in a manner consistent with U.S. obligations under international agreements, and it provides for waiver by the head of the federal agency awarding the ARRA funds under three circumstances:
- a.) Iron, steel, or relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality;
  - b.) Inclusion of iron, steel, or manufactured goods produced in the United States will increase the cost of the overall project by more than 25 percent; or

c.) Applying the domestic preference would be inconsistent with the public interest.

**6. WAGE RATE REQUIREMENTS:**

a.) Section 1606 of the Recovery Act requires that all laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to the Recovery Act shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code. Pursuant to Reorganization Plan No. 14 and the Copeland Act, 40 U.S.C. 3145, the Department of Labor has issued regulations at 29 CFR parts 1, 3, and 5 to implement the **Davis-Bacon** and related Acts. Regulations in 29 CFR 5.5 instruct agencies concerning application of the standard **Davis-Bacon** contract clauses set forth in that section. The standard **Davis-Bacon** contract clauses found in 29 CFR 5.5(a) are incorporated into this contract and any subcontracts that that are in excess of \$2,000 for construction, alteration or repair (including painting and decorating).

b.) Inquiries concerning the application of **Davis-Bacon** requirements to a particular federally assisted project should be directed to the Federal agency funding the project. The Secretary of Labor retains final coverage authority under Reorganization Plan Number 14.

**7. REPORTING REQUIREMENTS:** Pursuant to Section 1512 of the ARRA, state agencies receiving ARRA funds must submit a report to the federal government containing information on the use of ARRA funds no later than ten (10) calendar days after the end of each calendar quarter. Accordingly, Contractor agrees to provide the state of Nevada with such information, no later than five (5) calendar days after the end of each calendar quarter, as is required by the state of Nevada to comply with ARRA reporting requirements. Section 1512 of ARRA, its implementing regulations (2 CFR §176.50), guidance provided by the White House Office of Management and Budget and the terms of the ARRA grant that provides funds for this contract provide guidance on what information must be reported.

**8. SUBCONTRACTOR FLOW-DOWN REQUIREMENTS:** Contractor agrees that it shall include these supplemental terms and conditions, including this requirement, in any of its subcontracts in connection with projects funded in whole or in part with funds available under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5.

By: \_\_\_\_\_

Signature of Official Authorized to Sign Application

\_\_\_\_\_  
Date

For: \_\_\_\_\_

Name of Independent Contractor

\_\_\_\_\_  
Title of Project

ATTACHMENT BB  
INSURANCE SCHEDULE

**INDEMNIFICATION CLAUSE:**

Contractor shall indemnify, hold harmless and, not excluding the State's right to participate, defend the State, its officers, officials, agents, and employees (hereinafter referred to as "Indemnatee") from and against all liabilities, claims, actions, damages, losses, and expenses including without limitation reasonable attorneys' fees and costs, (hereinafter referred to collectively as "claims") for bodily injury or personal injury including death, or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Contractor or any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of or recovered under the Workers' Compensation Law or arising out of the failure of such contractor to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnatee shall, in all instances, except for claims arising solely from the negligent or willful acts or omissions of the Indemnatee, be indemnified by Contractor from and against any and all claims. It is agreed that Contractor will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. In consideration of the award of this contract, the Contractor agrees to waive all rights of subrogation against the State, its officers, officials, agents and employees for losses arising from the work performed by the Contractor for the State.

**INSURANCE REQUIREMENTS:**

Contractor and subcontractors shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Contract are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Contractor, his agents, representatives, employees or subcontractors.

The insurance requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The State in no way warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that might arise out of the performance of the work under this contract by the Contractor, his agents, representatives, employees or subcontractors and Contractor is free to purchase additional insurance as may be determined necessary.

A. **MINIMUM SCOPE AND LIMITS OF INSURANCE:** Contractor shall provide coverage with limits of liability not less than those stated below. An excess liability policy or umbrella liability policy may be used to meet the minimum liability requirements provided that the coverage is written on a "following form" basis.

1. **Commercial General Liability – Occurrence Form**

Policy shall include bodily injury, property damage and broad form contractual liability coverage.

- |   |             |
|---|-------------|
| • General Aggregate                         | \$2,000,000 |
| • Products – Completed Operations Aggregate | \$1,000,000 |
| • Personal and Advertising Injury           | \$1,000,000 |
| • Each Occurrence                           | \$1,000,000 |

- a. The policy shall be endorsed to include the following additional insured language: "The State of Nevada shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Contractor".

**2. Worker's Compensation and Employers' Liability**

Workers' Compensation	Statutory
Employers' Liability	
Each Accident	\$100,000
Disease – Each Employee	\$100,000
Disease – Policy Limit	\$500,000

- a. Policy shall contain a waiver of subrogation against the State of Nevada.
- b. This requirement shall not apply when a contractor or subcontractor is exempt under N.R.S., **AND** when such contractor or subcontractor executes the appropriate sole proprietor waiver form.

**3. Fidelity Bond or Crime Insurance**

Bond or Policy Limit \$\_\_\_\_\_

- a. The bond or policy shall be issued with limits based on the amount of cash being handled by the Contractor.
- b. The bond or policy shall include coverage for all directors, officers, agents and employees of the Contractor.
- c. The bond or policy shall include coverage for third party fidelity and name the State of Nevada as loss payee.
- d. The bond or policy shall include coverage for extended theft and mysterious disappearance.
- e. The bond or policy shall not contain a condition requiring an arrest and conviction.

**B. ADDITIONAL INSURANCE REQUIREMENTS:** The policies shall include, or be endorsed to include, the following provisions:

1. On insurance policies where the State of Nevada is named as an additional insured, the State of Nevada shall be an additional insured to the full limits of liability purchased by the Contractor even if those limits of liability are in excess of those required by this Contract.
2. The Contractor's insurance coverage shall be primary insurance and non-contributory with respect to all other available sources.

**C. NOTICE OF CANCELLATION:** Each insurance policy required by the insurance provisions of this Contract shall provide the required coverage and shall not be suspended, voided or canceled except after thirty (30) days prior written notice has been given to the State, except when cancellation is for non-payment of premium, then ten (10) days prior notice may be given. Such notice shall be sent directly to **(State of Nevada Department Representative's Name & Address)**.

**D. ACCEPTABILITY OF INSURERS:** Insurance is to be placed with insurers duly licensed or authorized to do business in the state of Nevada and with an "A.M. Best" rating of not less than A-



VII. The State in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

- E. **VERIFICATION OF COVERAGE:** Contractor shall furnish the State with certificates of insurance (ACORD form or equivalent approved by the State) as required by this Contract. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

All certificates and any required endorsements are to be received and approved by the State before work commences. Each insurance policy required by this Contract must be in effect at or prior to commencement of work under this Contract and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this Contract or to provide evidence of renewal is a material breach of contract.

All certificates required by this Contract shall be sent directly to **(State Department Representative's Name and Address)**. The State project/contract number and project description shall be noted on the certificate of insurance. The State reserves the right to require complete, certified copies of all insurance policies required by this Contract at any time.

- F. **SUBCONTRACTORS:** Contractors' certificate(s) shall include all subcontractors as additional insureds under its policies **or** Contractor shall furnish to the State separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum requirements identified above.
- G. **APPROVAL:** Any modification or variation from the insurance requirements in this Contract shall be made by the Attorney General's Office or the Risk Manager, whose decision shall be final. Such action will not require a formal Contract amendment, but may be made by administrative action.

## **Attachment C**

### **REFERENCE QUESTIONNAIRE**

The State of Nevada, as a part of the RFP process, requires proposing vendors to submit a minimum of three (3) business references as required within this document. The purpose of these references is to document the experience relevant to the scope of work and provide assistance in the evaluation process.

The proposing vendor is required to send the following reference form to each business reference listed. The business reference, in turn, is requested to submit the Reference Form directly to the State of Nevada, NSOE by the RFP submission deadline for inclusion in the evaluation process. The form and information provided will become a part of the submitted proposal. The business reference may be contacted for validation of the response.

## RFP # 0003 REFERENCE QUESTIONNAIRE FOR:

\_\_\_\_\_  
(Name of company requesting reference)

This form is being submitted to your company for completion as a business reference for the company listed above. This form is to be returned to the State of Nevada, Nevada State Office of Energy, via facsimile at 775.687-1869 or e-mail at tvogel@energy.nv.gov, no later than **August** , and **must not** be returned to the company requesting the reference.

For questions or concerns regarding this form, please contact the State of Nevada, Nevada State Office of Energy by telephone 775. 687-1850 or by e-mail tvogel@energy.nv.gov. When contacting us, please be sure to include the Request for Proposal number listed at the top of this page.

### **CONFIDENTIAL INFORMATION WHEN COMPLETED**

<b>Company providing reference:</b>	
<b>Contact name and title/position</b>	
<b>Contact telephone number</b>	
<b>Contact e-mail address</b>	

#### QUESTIONS:

1. In what capacity have you worked with this vendor in the past?  
COMMENTS:
  
2. How would you rate this firm's knowledge and expertise?  
\_\_\_\_ (3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable)  
COMMENTS:
  
3. How would you rate the vendor's flexibility relative to changes in the project scope and timelines?  
\_\_\_\_ (3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable)  
COMMENTS:

4. What is your level of satisfaction with hard-copy materials produced by the vendor?  
\_\_\_\_\_ (3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable)

COMMENTS:

5. How would you rate the dynamics/interaction between the vendor and your staff?  
\_\_\_\_\_ (3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable)

COMMENTS:

6. Who were the vendor's principal representatives involved in your project and how would you rate them individually? Would you comment on the skills, knowledge, behaviors or other factors on which you based the rating?  
(3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable)

Name: \_\_\_\_\_ Rating: \_\_\_\_\_

Name: \_\_\_\_\_ Rating: \_\_\_\_\_

Name: \_\_\_\_\_ Rating: \_\_\_\_\_

Name: \_\_\_\_\_ Rating: \_\_\_\_\_

COMMENTS:

7. How satisfied are you with the products developed by the vendor?  
\_\_\_\_\_ (3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable)

COMMENTS:

8. With which aspect(s) of this vendor's services are you most satisfied?

COMMENTS:

9. With which aspect(s) of this vendor's services are you least satisfied?

COMMENTS:

10. Would you recommend this vendor's services to your organization again?

COMMENTS: